

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

Docket No. FIFRA-08-2005-0005

2005 JUN 19 PM 2:30

FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:

**Town of Ridgway
P.O. Box 10
Ridgway, CO 81432**

Respondent.

**COMPLAINT AND NOTICE OF
OPPORTUNITY FOR HEARING**

COMPLAINT

This civil administrative action is instituted pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) by Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA" or "the act"), 7 U.S.C. Section 136l(a). Complainants are supervisors in the Legal Enforcement Program and the Technical Enforcement Program within the Office of Enforcement, Compliance and Environmental Justice, Region 8, EPA, who have been duly authorized to institute this action. This proceeding is subject to EPA's "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. part 22 ("Consolidated Rules of Practice").

DEFINITIONS

1. ***Pesticide*** is defined by 40 C.F.R. § 152.3(s) as “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant”
2. ***Registrant*** is defined by 7 USC § 2(y) as “The term ‘registrant’ means a person who has registered any pesticide pursuant to the provisions of this subchapter.”
3. ***Producer and produce*** are defined by 7 USC § 2(w) as “The term ‘producer’ means the person who manufactures, prepares, compounds, propagates, or processes any pesticide or device or active ingredient used in producing a pesticide. The term ‘produce’ means to manufacture, prepare, compound, propagate, or process any pesticide or device or active ingredient used in producing a pesticide. The dilution by individuals of formulated pesticides for their own use and according to the directions on registered labels shall not of itself result in such individuals being included in the definition of ‘producer’ for purposes of this subchapter.”
4. ***Make Available for Use*** is defined by 40 C.F.R. § 171.2(b)(2) as “to distribute, sell, ship, deliver for shipment, or receive and (having so received) deliver, to any person. However, the term excludes transactions solely between persons who are pesticide producers, registrants, wholesalers, or retail sellers, acting only in those capacities.”
5. ***To Distribute or Sell*** and other grammatical variations of the term such as “distributed or sold” and “distribution or sale,” is defined by 40 C.F.R. § 152.3(j) as “the acts of distributing, selling, offering for sale, holding for sale, shipping, holding for shipment,

delivering for shipment, or receiving and (having so received) delivering or offering to deliver, or releasing for shipment to any person in any State.”

6. ***Establishment*** is defined by 7 USC § 2(dd) as “The term ‘establishment’ means any place where a pesticide or device or active ingredient used in producing a pesticide is produced, or held, for distribution or sale.

GENERAL ALLEGATIONS

7. EPA has jurisdiction over this matter pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. Section 136l(a)(1).
8. Respondent, Town of Ridgway, (“the Respondent”) is a “person” within the meaning of Section 2(s) of FIFRA, 7 U.S.C. Section 136(s), and is therefore subject to regulation.
9. Section 25(a)(1) of FIFRA, 7 U.S.C. § 136w(a)(1), provides authority for the promulgation of regulations to carry out the terms and provisions of FIFRA. In accordance with that authority, EPA has promulgated and published regulations which appear at 40 C.F.R. parts 150 through 186.
10. Respondent engages in, from time to time, and among other activities, weed and pest control operations within the legal boundaries of the Town of Ridgway in Ridgway, Colorado.

COUNT 1
(Sale and or Distribution of an Unregistered Pesticide)

11. Paragraphs one through ten of the general allegations are incorporated by this reference and set out as if fully stated herein.
12. On or about August 10, 2004, Mr. David Golden, an EPA employee and credentialed enforcement inspector ("EPA Inspector"), conducted an inspection at Respondent's facility.
13. On or about August 10, 2004 ("the Inspection"), the EPA Inspector met with Respondent's Town Manager, Mr. Greg Clifton, and presented his enforcement credentials, and obtained the consent of Mr. Clifton to conduct the enforcement inspection.
14. During the inspection, Respondent stated to the EPA Inspector that Respondent had mixed and used an acetic acid solution ("the Solution") for the purpose of controlling white clover, a weed, on Respondent's property during 2003 and on or about July and August, 2004.
15. During the Inspection, the EPA Inspector observed four 55-gallon drums of acetic acid in Respondent's Parks shop.
16. During the Inspection, Respondent's employee, Mr. Danny Powers, stated to the Inspector that Respondent mixes the Solution which it uses to control, among other things, white clover, and that it is formulated as follows: 1. one gallon of a 20% acetic acid/water solution; 2. two ounces of orange oil; 3. two to three ounces of Dr. Bonner's peppermint soap; and 4. two to three ounces of molasses.

17. Respondent's employee Mr. Danny Powers stated to the Inspector that he had mixed and loaded the Solution into a backpack sprayer and made said sprayer available to Mr. Paul Gerwig, a seasonal employee of Respondent, and that Mr. Gerwig applied the Solution on August 9 and 10, 2004, to white clover, a weed, for the purpose of controlling white clover, on Respondent's property.
18. Respondent mixes and produces the Solution at Respondent's Parks Shop facility.
19. Respondent distributes or has distributed the Solution to some of its employees for the purpose of controlling white clover, a weed, on Respondent's property.
20. Respondent has not obtained a pesticide registration from EPA to produce or manufacture the Solution.
21. Respondent's use of the Solution for the purpose of controlling white clover constitutes a pesticidal use.
22. Respondent, by mixing and producing the Solution without obtaining a pesticide registration from EPA for the Solution, has produced an unregistered pesticide.
23. Respondent, by distributing and providing the Solution to some of its employees for the purpose of controlling white clover, has distributed an unregistered pesticide.
24. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), makes it a violation of FIFRA for a person to sell or distribute an unregistered pesticide.
25. Respondent, by its conduct of producing an unregistered pesticide and distributing the same to some of its employees for the purpose of controlling white clover, a weed, has violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

COUNT 2
(Production of a Pesticide in an Unregistered Establishment)

26. Paragraphs one through twenty-five of the general allegations and Count I are incorporated by this reference and set out as if fully stated herein.
27. Respondent mixes and produces the Solution at Respondent's Parks Shop facility.
28. Respondent has not obtained an EPA Pesticide Producer Establishment number from EPA for activities associated with its conduct of mixing and producing, or having mixed and produced, the Solution at Respondent's Parks Shop facility.
29. Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), makes it a violation of FIFRA for a person to manufacture or produce a pesticide in an establishment that is not registered with EPA as an EPA Pesticide Producer Establishment.
30. Respondent, by its conduct of manufacturing or producing a pesticide in an establishment that has not been registered with EPA as an EPA Pesticide Producer Establishment, has violated Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).

PROPOSED CIVIL PENALTY

Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1) and 40 C.F.R. Part 19, authorizes the assessment of a civil penalty of up to \$5,500.00 for each day of each violation of FIFRA. Agency policy with respect to assessment of civil penalties under FIFRA is governed by EPA's Enforcement Response Policy for the Federal Insecticide, Fungicide and Rodenticide Act

(FIFRA), July 2, 1990, which provides a rational and consistent method for applying the statutory penalty factors to the circumstances of specific cases. A copy is enclosed as **Complainant's Exhibit 1**.

In arriving at the assessment of the penalty specified below, EPA, as required by section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), has taken into consideration the following, as known to Complainant at this time:

- The size of Respondent's business;
- Respondent's ability to continue in business in light of the proposed penalty; and
- The gravity of the alleged violation(s).

The reasoning behind the proposed penalty in this matter is detailed in the Penalty Calculation Narrative and the FIFRA Penalty Calculation Worksheet, incorporated herein by reference and enclosed as **Complainant's Exhibits 2 and 3**, respectively.

Based on the above considerations, EPA proposes to assess the following civil penalty for each of the violations described above:

COUNT I	\$ 5,850
COUNT II	\$ 6,500
TOTAL PROPOSED PENALTY	\$ 12,350

TERMS OF PAYMENT

If you do not contest the findings and assessments set out above, payment of the penalty for the violations may be forwarded to EPA. Payment must be made, within (thirty) 30 calendar days of receipt of this complaint, by sending a certified or cashier's check payable to "Treasurer, United States of America," in care of:

U. S. EPA, Region VIII
(Regional Hearing Clerk)
Mellon Bank
P. O. Box 360859M
Pittsburgh, PA 15251

A copy of the check must be mailed simultaneously to the attorney listed below.

Payment of the penalty in this manner shall constitute consent by the Respondent to the assessment of the penalty and a waiver of the Respondent's right to a hearing on this matter.

NOTICE OF OPPORTUNITY FOR HEARING

This administrative civil penalty proceeding will be conducted pursuant to the Consolidated Rules of Practice, 40 C.F.R. part 22, a copy of which is enclosed with this complaint. Pursuant to these rules, you have the right to request a hearing to contest any factual allegation set forth in the complaint or the propriety of the proposed penalty. If you (1) wish to contest the factual claims made in this Complaint; (2) wish to contest the propriety of the proposed penalty; or (3) believe that you are entitled to judgment as a matter of law, you must file a written answer and a copy within thirty (30) days after this Complaint is served. Should you choose to contest any aspect of this Complaint your answer must (1) clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint; (2) briefly state all facts and circumstances, if any, which constitute grounds for a defense; (3) state the facts which you dispute; and (4) specifically request an administrative hearing, if desired. Failure to deny any of the factual allegations in the Complaint will constitute an admission of the undenied allegations. The Answer and a copy shall be sent to the EPA Region 8 Hearing Clerk, 999 - 18th Street, Suite 300, Denver, Colorado 80202-2466. Please send a copy of the Answer and all other documents which you file in this action to the attorney noted below.

IF YOU FAIL TO REQUEST A HEARING, YOU WILL WAIVE YOUR RIGHT TO FORMALLY CONTEST ANY OF THE ALLEGATIONS SET FORTH IN THE COMPLAINT.

IF YOU FAIL TO FILE A WRITTEN ANSWER WITHIN THE THIRTY (30) CALENDAR DAY TIME LIMIT, A DEFAULT JUDGMENT MAY BE ENTERED PURSUANT TO 40 C.F.R. § 22.17. THIS JUDGMENT MAY IMPOSE THE PENALTY PROPOSED IN THE COMPLAINT.

You are further informed that the Consolidated Rules of Practice prohibit any *ex parte* (unilateral) discussion of the merits of any action with the Regional Administrator, Regional Judicial Officer, Administrative Law Judge, or any person likely to advise these officials in the decision of the case.

SETTLEMENT CONFERENCE

EPA encourages all parties against whom a civil penalty is proposed to pursue the possibility of settlement as a result of an informal conference. Therefore, whether or not you request a hearing, you may confer informally with the Agency concerning (1) whether the alleged violations in fact occurred as set forth above, or (2) the propriety of the proposed penalty in relation to the size of your operation, the gravity of the violation, and the effect of the proposed penalty on your ability to continue in business. The request for an informal conference does not stay the running of the thirty (30) day time period for requesting a hearing and filing an answer.

To explore the possibility of settlement in this matter or if you have questions, please contact the attorney listed below.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION VIII,
OFFICE OF ENFORCEMENT, COMPLIANCE,
AND ENVIRONMENTAL JUSTICE,

Complainant.

Date: _____

By: _____

Michael T. Risner, Director
David J. Janik, Supervisory Enforcement Attorney
Legal Enforcement Program

Date: _____

By: _____

Elisabeth Evans, Director
Technical Enforcement Program

Date: _____

By: _____

Dana J. Stotsky
Senior Enforcement Attorney
Legal Enforcement Program
Colorado Bar # 14717
Phone: (303)-312-6905
FAX: (303) 312-6953

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION VIII,
OFFICE OF ENFORCEMENT, COMPLIANCE,
AND ENVIRONMENTAL JUSTICE,

Complainant.

Date: June 1, 2005

By: 

Michael T. Risner, Director
David J. Janik, Supervisory Enforcement Attorney
Legal Enforcement Program

Date: June 1, 2005

By: 

Elisabeth Evans, Director
Technical Enforcement Program

Date: May 31, 2005

By: 

Dana J. Stotsky
Senior Enforcement Attorney
Legal Enforcement Program
Colorado Bar # 14717
Phone: (303)-312-6924
FAX: (303) 312-6953

IN THE MATTER OF: Town of Ridgway,
Docket No. FIFRA-08-2005-0005

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true original and one copy of the COMPLAINT, AND NOTICE OF OPPORTUNITY FOR HEARING along with the following Complainant's Exhibits:

1. Enforcement Response Policy for the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), July 2, 1990.
2. Penalty Calculation Narrative, dated July 18, 2005.
3. FIFRA Penalty Calculation Worksheet, dated July 18, 2005.

And other enclosed documents:

1. Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits. 40 C.F.R. part 22.
2. U.S. EPA Small Business Resources, dated May, 2003, EPA 300-F-03-001.

were hand-carried to the Regional Hearing Clerk, EPA Region 8, 999 18th Street, Denver, Colorado, 80202, and that a true copy of the same was sent certified mail to:

Mr. Greg Clifton, Town Manager
(Registered Agent Address)
Town of Ridgway
P.O. Box 10
Ridgway, Colorado 81432

7/19/05
Date

Judith McTernan
BY: Judith McTernan

Complainant's EXHIBIT 1

ENFORCEMENT RESPONSE POLICY FOR THE FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT (FIFRA)

Office of Compliance Monitoring
Office of Pesticides and Toxic Substances
U.S. Environmental Protection Agency

July 2, 1990

1st Page only

Penalty Calculation Narrative
Town of Ridgway

Complainant's
EXHIBIT
2

1. To ensure a uniform and consistent enforcement response and application of the statutory penalty criteria in the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), the U.S. Environmental Protection Agency (EPA) developed the July 2, 1990 Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act (1990 Policy).

2. According to the 1990 Policy, the appropriate enforcement response for the sale and/or distribution of a pesticide not registered under FIFRA Section 3 is a civil penalty. The appropriate enforcement response for producing a pesticide in an establishment not registered with EPA is also a civil penalty. The Town of Ridgway (Ridgway) is charged with one count of distributing an unregistered pesticide (Count I), and one count of producing a pesticide in an unregistered establishment (Count II).

3. FIFRA Section 14(a)(4) requires EPA to "consider the appropriateness of (a civil penalty) to the size of the business of the person charged, the effect on the person's ability to continue in business, and the gravity of the violation."

4. Following the guidance in the 1990 Policy, EPA calculates a proposed civil penalty using the following process. First, the gravity of the offense is identified using Appendix A of the 1990 Policy. Appendix A identifies violations of distributing a pesticide that is not registered under FIFRA Section 3 as a gravity level 2 violation. Appendix A identifies a violation of FIFRA section 12(a)(2)(L) and FIFRA section 7(a) ["PRODUCED a pesticide or active ingredient subject to the Act in an UNREGISTERED ESTABLISHMENT"] as gravity level 2.

5. Second, according to the 1990 policy, the size of business is taken into account. The size of business is determined from the company's gross revenues from all revenue sources during the prior calendar year. When information concerning the size of business is not readily available, the 1990 Policy directs the use of Category I size of business. This will remain the base penalty value unless Ridgway can establish that it should be considered in a smaller category. Thus, EPA has determined the size of the business category for Ridgway as Category I (gross revenues over \$1,000,000).

6. Third, EPA used the above gravity and size of business components and the Civil Penalty Matrix for FIFRA Section 14(a)(1) violations on page 19 of the 1990 Policy to determine the dollar amount of the proposed penalty. Violations with level 2 gravity and in Business Category I are assessed a penalty of \$6,500 for each count. Thus, the 2 counts in this case have a base penalty of \$13,000. The base penalty includes a 10% increase in accordance with the Civil Monetary Penalty Inflation Adjustment Rule.

7. The 1990 Penalty Policy then directs that the actual circumstances of the violations be considered using gravity adjustment criteria listed in Appendix B of that document. The penalty amounts determined from the matrix can be adjusted either upward or downward depending on the specifics of the case known to EPA at the time of the penalty calculation. No gravity adjustment was made for Count II since according to page 22 of the ERP, "The gravity of record keeping and reporting violations are already considered in the dollar amounts presented in the

FIFRA civil penalty matrices. Further, record keeping and reporting violations do not lend themselves to utilizing the gravity adjustments listed in Appendix B. Therefore, first-time civil penalties should be assessed at the matrix value."

The following gravity adjustment values were used to evaluate the FIFRA violations associated with using a pesticide not registered under FIFRA Section 3:

(a) Pesticide: a value of 2 is assigned as a similar product (Nature's Glory Weed and Grass Killer Concentrate, EPA registration number 69836-1-63191, is 25% acetic acid) with the same main ingredient uses the Signal Word "Danger."

(b) The human harm value was assigned a value of 1 as a similar product, described above in (a), calls for the use of protective eyewear when handling. The handler and mixer wore safety glasses, which is not considered protective eyewear. As such, there was minor potential for harm to human health.

(c) The environmental harm was assigned a value of 0 as there are similar products that are registered pesticides. As such, there was no potential or actual harm to the environment.

(d) The US EPA had no record of prior FIFRA violations by Ridgway during the last five years and, therefore, a value of 0 has been assigned for this component.

(e) Culpability is assigned a value of 4 as the use of this product by Ridgway is a knowing or willful violation of the statute. Colorado Department of Agriculture and EPA both stated in writing to Ridgway that the use of this product would be use of an unregistered product and a violation of FIFRA.

This results in a total gravity adjustment value of 7 for the violation associated with the use of a pesticide not registered under FIFRA Section 3.

8. Using a Gravity Adjustment Value of 7, Table 3 in Appendix C of the 1990 Policy states to reduce the matrix value by 10%. Therefore, the penalty for Count I, the violation of FIFRA Section 12(a)(1)(A), is reduced by \$650, resulting in a final penalty amount of \$5,850. The penalty for Count II is assessed at the matrix value of \$6,500.

9. Finally, EPA attempts to take into consideration what effect the calculated penalty would have on the ability of Ridgway to pay based on limited information available to EPA. Adjustments of the proposed penalty can be made at a later date should information warranting such a change become available. No adjustments were made at this time.

10. In sum, EPA arrived at a total penalty of \$12,350 for the Ridgway's violations of FIFRA Sections 12(a)(1)(A), and 12(a)(2)(L)7(a) by considering all of the FIFRA Section 14(a)(4) penalty criteria through the use of the 1990 Policy.

Prepared by: David Golden

Date: July 18, 2005

FIFRA PENALTY CALCULATION WORKSHEET

Complainant's
EXHIBIT
3

Respondent: Town of Ridgway
PO Box 10
Ridgway, CO 81432

Prepared by: David Golden
Date: July 18, 2005

Appendix A

1. Statutory violation
2. FTTS code
3. Violation level

Table 2

4. Violation category: §14(a)(1) or §14(a)(2)
5. Size of business category

Table 1

6. Base penalty
(Base penalty includes a 10% increase in accordance with the Civil Monetary penalty Inflation Adjustment Rule.)

Appendix B

7. Gravity adjustments
 - a. pesticide toxicity
 - b. human harm
 - c. environmental harm
 - d. compliance history
 - e. culpability
 - f. total gravity adjustment value
(add items 7a-7e)

Table 3

- g. percent adjustment
- h. dollar adjustment

8. Final penalty
(item 7h from item 6)

9. Combined total penalty
(total of all Columns for line 8, above)

Count I	Count II
§12(a)(1)(A)	§12(a)(2)(L)7(a)
1AA	2LA
2	2
§14(a)(1)	§14(a)(1)
1	1
\$6,500	\$6,500
2	no adjustment
1	
0	
0	
4	
7	
- 10%	
\$650	
\$5,850	\$6,500
\$12,350	

develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input to the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local or tribal governments. This rule does not impose any enforceable duties on these entities. Instead, it merely revises the procedural rules governing EPA's administrative enforcement proceedings.

F. Executive Order 13045

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to the E.O. 13045 because it is not "economically significant" as defined in E.O. 12866, and because it does not involve decisions based on environmental health or safety risks.

G. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the

development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

I. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 22

Environment protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Hazardous waste, Penalties, Pesticides and pests, Poison prevention, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: June 30, 1999.

Carol M. Browner,
Administrator.

Therefore, 40 CFR part 22 is revised to read as follows:

PART 22—CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS

Subpart A—General

Sec.

- 22.1 Scope of this part.
- 22.2 Use of number and gender.
- 22.3 Definitions.
- 22.4 Powers and duties of the Environmental Appeals Board, Regional Judicial Officer and Presiding Officer; disqualification, withdrawal, and reassignment.
- 22.5 Filing, service, and form of all filed documents; business confidentiality claims.
- 22.6 Filing and service of rulings, orders and decisions.
- 22.7 Computation and extension of time.
- 22.8 Ex parte discussion of proceeding.
- 22.9 Examination of documents filed.

Subpart B—Parties and Appearances

- 22.10 Appearances.
- 22.11 Intervention and non-party briefs.
- 22.12 Consolidation and severance.

Subpart C—Prehearing Procedures

- 22.13 Commencement of a proceeding.
- 22.14 Complaint.
- 22.15 Answer to the complaint.
- 22.16 Motions.
- 22.17 Default.
- 22.18 Quick resolution; settlement; alternative dispute resolution.
- 22.19 Prehearing information exchange; prehearing conference; other discovery.
- 22.20 Accelerated decision; decision to dismiss.

Subpart D—Hearing Procedures

- 22.21 Assignment of Presiding Officer; scheduling the hearing.
- 22.22 Evidence.
- 22.23 Objections and offers of proof.
- 22.24 Burden of presentation; burden of persuasion; preponderance of the evidence standard.
- 22.25 Filing the transcript.
- 22.26 Proposed findings, conclusions, and order.

Subpart E—Initial Decision and Motion to Reopen a Hearing

- 22.27 Initial decision.
- 22.28 Motion to reopen a hearing.

Subpart F—Appeals and Administrative Review

- 22.29 Appeal from or review of interlocutory orders or rulings.
- 22.30 Appeal from or review of initial decision.

1st Page
Only

Complainant's Enclosure 1



U. S. EPA Small Business Resources

If you own a small business, the United States Environmental Protection Agency (EPA) offers a variety of compliance assistance and tools to assist you in complying with federal and state environmental laws. These resources can help you understand your environmental obligations, improve compliance and find cost-effective ways to comply through the use of pollution prevention and other innovative technologies.

Hotlines, Helplines and Clearinghouses

EPA sponsors approximately 89 free hotlines and clearinghouses that provide convenient assistance regarding environmental requirements.

The National Environmental Compliance Assistance Clearinghouse provides quick access to compliance assistance tools, contacts, and planned activities from the U.S. EPA, states, and other compliance assistance providers: <http://www.epa.gov/clearinghouse>

Pollution Prevention Clearinghouse
<http://www.epa.gov/opptintr/library/ppicindex.htm>

EPA's Small Business Ombudsman Hotline can provide a list of all the hot lines and assist in determining the hotline best meeting your needs:
(800) 368-5888

Emergency Planning and Community Right-To-Know Act
(800) 424-9346

National Response Center (to report oil and hazardous substance spills)
(800) 424-8802

Toxics Substances and Asbestos Information
(202) 554-1404

Safe Drinking Water
(800) 426-4791

Stratospheric Ozone and Refrigerants Information
(800) 296-1996

Clean Air Technology Center
(919) 541-0800

Wetlands Helpline
(800) 832-7828

EPA Websites

EPA has several Internet sites that provide useful compliance assistance information and materials for small businesses. If you don't have access to the Internet at your business, many public libraries provide access to the Internet at minimal or no cost.

EPA's Home Page
<http://www.epa.gov>

Small Business Assistance Program
<http://www.epa.gov/ttn/sbap>

Office of Enforcement and Compliance Assurance
<http://www.epa.gov/compliance>

Compliance Assistance Home Page
<http://www.epa.gov/compliance/assistance>

Office of Regulatory Enforcement
<http://www.epa.gov/compliance/civil/index.html>

Office of Site Remediation Enforcement
<http://www.epa.gov/compliance/cleanup>

Innovative Programs for Environmental Performance
<http://www.epa.gov/partners>

Small Business Ombudsman
www.sba.gov/ombudsman

Complainant's
Enclosure 2